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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/427,557	10/26/99	ALITALO K	28967/35061A

HM12/0510

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EXAMINER	
LEE, G	
ART UNIT	**PAPER NUMBER**
1632	6

DATE MAILED: 05/10/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.	Applicant(s)
09/427,657	Alitalo K et al
Examiner	**Group Art Unit**
Gai (Jennifer) Mi Le	1632

☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-30 is/are pending in the applicat

Of the above, claim(s) _____ is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims 1-30 are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____ .

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-18, 21 and 29-30, drawn to a method of treating restenosis with a polynucleotide encoding a VEGF, classified in class 514, subclass 44.

II. Claims 19-21, and 29-30, drawn to a method of treating restenosis with a VEGF polypeptide, classified in class 514, subclass 2-21.

III. Claims 22-28, drawn to a medical device with VEGF polynucleotide, classified in class 536, subclass 23.1.

IV. Claims 22-28, drawn to a medical device with VEGF polypeptide, classified in 530, subclass 324.

Claims 29 and 30 are generic to groups I and II and will be examined based on the nature of the elected invention.

Claims 22-28 are generic to groups III and IV and will be examined based on the nature of the elected invention.

2. The inventions are distinct, each from the other because of the following reasons:

Invention I and invention II are mutually exclusive and independent methods. The method of treating restenosis with a polynucleotide of invention I is not required for the method of treating with a polypeptide of invention II. The process of using the polypeptide to treat restenosis of invention II is not required for the method of using polynucleotide of invention I.

Invention I and invention III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be practiced with another materially different process of using that product (M.P.E.P. 806.05(h)). In the instant case the polynucleotide can be used as a probe in hybridization in vitro.

Invention I and invention IV are drawn to distinct products capable of separate use. The polynucleotide of invention I can be used as a method of treating restenosis and the medical device with VEGF polypeptide can be used to produce antibodies.

Invention II and invention III are drawn to distinct products capable of separate use. The polypeptide of invention II can be used as method of treating restenosis with VEGF polypeptide (protein therapy) and the medical device with VEGF polynucleotide can be used to be used as a probe for hybridization assays.

Invention II and invention IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for

using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be practiced with another materially different process of using that product (M.P.E.P. 806.05(h)). In the instant case the polypeptide can be used to produce antibodies in vitro.

Invention III and invention IV are drawn to distinct products capable of separate use. The polynucleotide of invention III can be used as a probe in hybridization assays for detection and the polypeptide of invention IV can be use to produce antibodies.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for any single Group is unique and not required for any other Group, restriction for examination purposes as indicated is proper.

3. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17 (h).

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gai (Jennifer) Mi Lee whose telephone is (703) 306-5881. The examiner can normally be reached on Monday-Thursday from 9:00 to 5:30 (Eastern time). The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jasemine Chambers, can be reached on 703-308-2035. The FAX phone numbers for group 1600 are 703-308-4242 and 703-305-3014.

An inquiry of a general nature or relating to the status of the application should be directed to the group receptionist whose telephone number is 703-308-0196.

Gai (Jennifer) Mi Lee
Patent Examiner
Group 1600

Karen M. Hauda
Karen M. Hauda
Patent Examiner